

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

1. WILLIAM RABORN,

Plaintiff,

v.

1. DAVID JOHNSTON,
2. COVENANT TRANSPORT, INC.,
and
3. MARSH USA, INC.,

Defendants.

Case No. 16-CV-401-JHP

NOTICE OF REMOVAL

The Defendant, Covenant Transport, Inc., by counsel, hereby files his Notice of Removal. In support, Defendant Covenant Transport, Inc. shows the following grounds for removal:

1. Pursuant to 28 U.S.C. §§ 1332(a), 1441(a) and 1446 and LCvR 81.2, Defendant Covenant Transport, Inc. removes this action from the District Court of Craig County, Oklahoma, styled *William Raborn, Plaintiff, v. David Johnston, et al., Defendants*, Case No. CJ-2016-10.

Diversity of the Parties

2. Plaintiff William Raborn is a resident and citizen of and domiciled in the State of Texas. (Ex. 1, Plaintiff's Petition, ¶ 1).

3. Defendant David Johnston is a resident and citizen of and domiciled in the State of California. (Ex. 1, ¶ 2; Ex. 2, David Johnston's Consent to Removal).

4. Defendant Covenant Transport, Inc. is a Tennessee corporation with its principal place of business in Chattanooga, Tennessee.

5. Marsh USA, Inc. is a Delaware Corporation with its principal place of business in New York, New York. (Ex. 3, Marsh USA, Inc.'s Consent to Removal).

Venue

6. Venue is proper in this Court for purposes of removal. Plaintiff brought this action in the District Court of Craig County, Oklahoma - located within the federal judicial district for the Eastern District of Oklahoma. 28 U.S.C. § 116(c). Therefore, venue is proper in this Court because it is the federal "district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

Amount in Controversy

6. Plaintiff seeks judgment against Defendants for damages in excess of \$75,000.00. (Ex. 1, Plaintiff's Petition, ¶ 17). Therefore, the amount in controversy is greater than \$75,000.00. 28 U.S.C. § 1446(c)(2).

Timeliness of Removal

7. Defendant Covenant Transport, Inc. was served with the Petition and an issued Summons via certified mail on August 18, 2016. (Ex. 4, Summons

/ Return of Service). Therefore, Defendant Covenant Transport, Inc. timely files this Notice of Removal within 30 days after service of summons upon it pursuant to 28 U.S.C. § 1446(b).

Consent

8. Defendants David Johnston (Ex. 2) and Marsh USA, Inc. (Ex. 3) have given written consent to the removal of this action.

Miscellaneous

9. Pursuant to 28 U.S.C. § 1446(a), copies "of all process, pleadings and orders served upon" Defendant Covenant Transport, Inc. in the aforementioned state action are identified and attached as follows: Petition (Ex. 1) and Summons (Ex. 4).

10. Pursuant to LCvR81.2, "a clearly legible copy of all documents filed or served in the case, along with a docket sheet of the case" are identified and attached as follows: Petition (Ex. 1); Notice of Worker's Compensation Lien (Ex. 5); Plaintiff's Unopposed Motion for Extension of Time to Serve Process (Ex. 6); Order (Ex. 7); Return of Summons - Covenant Transport, Inc. (Ex. 4); Return of Summons - Marsh USA, Inc. (Ex. 8); Return of Summons - David Johnson (Ex. 9); Defendant Covenant Transport, Inc.'s Reservation of Time (Ex. 10), Defendant Johnson's Reservation of Time (Ex. 11), and; Docket Sheet (Ex. 12).

11. Pursuant to LCvR81.1, jury trial is hereby demanded.

Conclusion

12. Defendant Covenant Transport, Inc. will promptly give written notice of the filing of this Notice of Removal to Plaintiff's counsel and will promptly file a copy of the Notice of Removal with the Court Clerk for Craig County, Oklahoma, as required.

13. In the event this Court identifies a defect in this Notice of Removal, Defendant Covenant Transport, Inc. respectfully requests the Court grant it leave to amend this Notice to cure the defect. *See, generally, Hendrix v. New Amsterdam Cas. Co.*, 390 F.2d 299, 301-302 (10th Cir. 1968).

Respectfully submitted,

s/Peter L. Wheeler

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CERTIFICATE OF SERVICE

This is to certify that on September 15, I electronically transmitted the above document to the Clerk of the Court using the ECF System for filing, and also mailed a copy via electronic mail to counsel shown below. Based on the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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s/Peter L. Wheeler
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